



UNITED STATES MARINE CORPS
MARINE CORPS LOGISTICS BASE
ALBANY, GEORGIA 31704-5000

BO 4200.9A
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25 Sep 89

BASE ORDER 4200.9A

From: Commanding General
To: Distribution List

Subj: UNSOLICITED CONTRACTOR PROPOSALS

Ref: (a) FAR 15.5 (NOTAL)
(b) BO 4200.4D
(c) NAPS (NOTAL)

Encl: (1) Procedures for Handling Unsolicited Proposals

1. Purpose. To provide guidance to personnel in dealing with contractors concerning Marine Corps contractual matters and to prescribe procedures for handling bona fide unsolicited proposals per reference (a).

2. Cancellation. BO 4200.9.

3. Information. It is the policy of the DoD to foster and encourage the submission of unsolicited proposals. An unsolicited proposal is a written offer to perform tasks or efforts initiated and submitted to the government by a prospective contractor, without a solicitation by the government, either formal or informal, with the objective of obtaining a contract. It is a valuable method for obtaining innovative or unique methods or approaches to accomplishing a mission from sources outside the government.

4. Summary of Revision. This Order has been updated and contains technical and administrative changes. The major technical change is that the Order is not applicable to unsolicited contractor proposals for public or civil works.

5. Policies Governing Communications with Industry

a. All communications intended for dissemination to a contractor or prospective contractor in connection with a contemplated procurement must be issued by an appropriate Contracting Officer or a duly authorized representative acting within the scope of their authority. This is to ensure that competitive sources, where applicable, will be treated on an equal basis. Policy also provides that an obligation of the government to enter into a contract must be properly made, that prospective contractor(s) are made aware equally of the details of the requirement, and that contractor(s) bid and proposal costs be kept to a minimum, consistent with the government requirement.

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b. Whenever oral or written communications between Base personnel and industry may affect the scope or provisions of a contract or may directly lead to an "unsolicited proposal," the appropriate Contract Specialist (Code 90) and/or Contracting Officer, if possible, will be parties to the discussions. If they cannot be made parties to the discussions, they will be advised immediately of the matters discussed and of any probable consequences of the discussions. These discussions will be documented.

c. Discussions with commercial concerns that involve substantive matters in connection with pending or prospective procurement actions will be conducted through the appropriate Contracting Officer. This includes the oral solicitation of prices, technical or management type information, or engineering data in connection with a contemplated procurement. However, this does not preclude normal discussions on a day-to-day basis with industry in general with an interest to keep abreast in technological advances, new products, and new applications for existing products, including specifications and brochures. The point to be remembered is that actions taken must not be interpreted as negotiation of prices or deliveries, or as constructive changes to existing contracts.

6. Policies Concerning Competition

a. While it is the policy of the DoD to encourage unsolicited proposals, a more fundamental policy to obtain full and open competition exists. That is, all procurements, whether by sealed bidding or by negotiation, will be made on a fully open and competitive basis to the maximum practicable extent. When the substance of an unsolicited proposal is available to the government without restriction from another source, closely resembles that of a competitive solicitation, or is otherwise not sufficiently unique for acceptance, the offeror will not be negotiated with on a sole-source basis.

b. A technical evaluation recommending acceptance of an unsolicited proposal will include a separate justification for the use of other than full and open competition stating the reasons that a competitive procurement is not feasible.

7. Action

a. Personnel will comply with the foregoing policies in the administration of government procurement programs and contracts.

b. Actions that commit the government to obtain supplies or services from commercial concerns, or actions that modify the terms of contracts or solicit proposals, will be processed only through proper administrative channels and executed only by designated Contracting Officers per reference (b).

c. Unsolicited proposals, as defined by reference (a), which are truly the product of original thinking by the organization which presents them, will be processed per the enclosure.

8. Applicability

- a. This Order is not applicable to nonappropriated fund activities.
- b. This Order is applicable to the Blount Island Command.
- c. This Order is not applicable to unsolicited contractor proposals for public or civil works. The Naval Facilities Engineering Command (NavFac) is responsible for all public and civil works contracting for the DON per reference (c). All unsolicited contractor proposals for public or civil works will be forwarded to the resident NavFac Contracting Officer for review and disposition.


A. J. FINGER
Deputy Base Commander

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PROCEDURES FOR HANDLING UNSOLICITED PROPOSALS

1. General

a. Government personnel will exercise care in handling unsolicited proposals. It is essential that personnel do not directly or indirectly solicit an "unsolicited proposal." For example, when technical personnel from the military departments meet people from industry at symposia or conferences, they often develop close professional relationships. However, these close relationships can cause difficulty by leading to an unintentional disclosure of information relating to a prospective government procurement. As a result of this inadvertent disclosure, the commercial concern is afforded an opportunity to submit a proposal in advance of formal procurement claiming that it is an unsolicited proposal and therefore eligible for special treatment. Obviously, such a proposal does not deserve the special consideration given to unsolicited proposals. Government personnel should try to be fully aware of the conditions under which a proposal was developed; otherwise, they may find it difficult to recognize a proposal that is truly unsolicited.

b. The same situation can arise in more obvious ways. For example, government personnel may hold discussions with a contractor's representative about specific areas of particular interest to the government, where the government contemplates future procurement action. The discussions may lead a contractor to submit a proposal offering a solution or application that the government desires. Here, a proposal was clearly submitted in response to a direct or indirect suggestion made during these discussions. To treat it as an unsolicited proposal would destroy public confidence in the DoD Procurement Program. This treatment could result in charges of favoritism, and could bring inquiry and investigation by higher authority. Thus, a proposal is not truly unsolicited when it directly results from conversations between DoD personnel and a contractor regarding specific areas of future procurement interest. The soliciting of an "unsolicited proposal," either directly or indirectly, by a government employee is not ethical and could be considered a violation of the standards of conduct for government employees.

c. Government employees will also be careful not to misuse information contained in an unsolicited proposal. Unsolicited proposals and the ideas contained in them are presumed to be proprietary to the source providing them even if the offeror neglects to mark the proposal with a legend restricting its use. Agencies are prohibited by subpart 15.5 of Federal Acquisition Regulation (FAR) from permitting all or any part of an unsolicited proposal to be used as the basis, or portion, of a solicitation or in negotiation with other firms unless the offeror is notified of and agrees to the intended use. Wrongful disclosure of information on an unsolicited proposal

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could result in a violation of 18 U.S.C. 1905. During evaluation of unsolicited proposals, informal personal contacts will be conducted in such a way to preclude agency commitments regarding acceptance of the proposal.

2. Procedure. The Contracts Directorate (Code 905) is designated the point of contact for unsolicited proposals. All copies of unsolicited proposals received will be forwarded directly to the Contracts Directorate (Code 905). The following procedures will then be followed in handling unsolicited proposals:

a. Receipt of Unsolicited Proposals

(1) Upon receipt, the Contracts Directorate (Code 905) will first determine if use of the proposal is limited by a more restrictive legend than provided in subpart 15.5 of FAR. If so, the proposal will be returned with a letter explaining that the proposal cannot be evaluated unless it is resubmitted with a satisfactorily revised legend. If the legend is satisfactory, a "Precautionary Disclosure Notice" will be attached as a cover sheet.

(2) The Contracts Directorate (Code 905) will log in the unsolicited proposal and examine it to ensure that the proposal contains sufficient technical and cost information, has been signed by a responsible official of the organization submitting the proposal, and complies with proprietary marking requirements. If the proposal is deficient in either of these areas, the offeror will be given an opportunity to provide the required data. If the examination reveals any reference to inventive concepts, technical innovations, or patents, the proposal will be coordinated with CMC (LBO) during evaluation.

(3) The Contracts Directorate (Code 905) will then notify the company in writing that its proposal has been received and is in the process of evaluation. The company will be informed as to when the evaluation will be completed (normally within 30 days). One copy will be maintained on file, and all other copies of the unsolicited proposal will be forwarded to the cognizant directorate/division/branch for evaluation. A suspense date will be established by the Contracts Directorate (Code 905) for the completion of the evaluation.

b. Evaluation

(1) The cognizant directorate/division/branch will perform a comprehensive evaluation of the unsolicited proposal and provide the Contracts Directorate (Code 905) with the results. If the evaluation cannot be completed in the allotted time, the Contracts Directorate (Code 905) will be notified and a new completion date established.

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(2) In evaluating an unsolicited proposal, personnel will consider, in addition to any other criteria, the following:

(a) Unique and innovative methods, approaches, or concepts that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.

(b) Overall scientific, technical, or socioeconomic merits of the proposed effort or activity.

(c) Potential contributions that the proposed effort is expected to make to the agency's specific mission, if pursued at this time.

(d) Capabilities, related experience, facilities, techniques, or unique combinations thereof that the offeror possesses and offers, and that are considered to be integral factors for achieving the scientific, technical, or socioeconomic objective(s) of the proposal.

(e) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.

(3) During the evaluation process, any communications with the offeror concerning clarification or modification of any aspects of the proposal will be directed through the Contracts Directorate (Code 905).

c. Results of Evaluation

(1) When it is determined that an otherwise meritorious unsolicited proposal is not related to the mission of the Marine Corps, the proposal will be returned to the Contracts Directorate (Code 905) for preparation of a response to the offeror.

(2) When a document qualifies as an unsolicited proposal, but the substance is available to the government without restriction from another source, closely resembles that of a pending competitive solicitation, or is otherwise not sufficiently unique to justify acceptance, the unsolicited proposal will not be considered acceptable. When acquisition is intended and full and open competition is feasible, the proposal will be returned to the Contracts Directorate (Code 905) together with the reasons for the return.

(3) When no action is intended on a proposal due to unavailability of funds or some other reason, the offeror will be notified by the Contracts Directorate (Code 905) why the proposal is not being acted upon. If appropriate, a copy will be kept on file for future use.

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(4) When a proposal receives a favorable evaluation and a requirement exists for material or services, the cognizant directorate/division/branch will initiate a purchase request to the Contracts Directorate (Code 905) referencing the unsolicited proposal. If the proposal is considered suitable for noncompetitive acquisition, it will be reviewed by the Competition Advocate Office (Code 812) per BO 4200.14.

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